
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
To: The Commission)

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.
ON THE JOINT BOARD'S RECOMMENDED DECISION**

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SUMMARY

Dobson urges the Commission to adopt universal service rules and policies that ensure wireless ETC applicants are given a fair opportunity to obtain universal service support. As ETCs, wireless carriers will be able to provide rural consumers with the panoply of wireless services afforded in urban areas that they deserve and demand. The relevant statutory framework favors competition, and thus the universal service rules should maximize consumers' access to competitive markets and the benefits they bring. The FCC also must keep in mind that the statute focuses on rural customers, not rural carriers, and these rural customers are to have access to telecommunications services that are reasonably comparable, in quality and price, to the services available in urban areas. Further, while the statute requires a sustainable fund, controlling the fund at the sole expense of competitive carriers would be inconsistent with the statute's commitments to competition and comparable service for rural consumers.

State ETC designation proceedings already are extremely rigorous and thus Dobson opposes the imposition of additional eligibility requirements as an inefficient and needless use of administrative resources. Likewise, the public interest standard of Section 214(e)(2) as applied to rural areas should not be used as a basis for raising unnecessary barriers to CETC entry. Any guidelines the Commission nevertheless determines to adopt must be narrowly tailored to identify qualified ETC applicants and should be applied only to designation in rural service areas. Dobson would support some narrowly tailored guidelines if they would bring uniformity to the state designation process. Any guideline must be applied only in a competitively neutral manner.

Dobson would support the proposed guidelines encouraging adequate financial resources, commitment and ability to provide the supported services, and ability to remain functional in emergencies. These guidelines are reasonably tied to the statutory criteria and could lead to more consistency and predictability in the ETC designation process. Dobson opposes the remaining guidelines suggested by the Joint Board as insufficiently tailored, unrelated to the statutory criteria and capable of being improperly used to impose monopoly-style regulation on competitive wireless carriers without evidence of consumer benefit.

- Adequate financial resources – any such showing must be required of all ETC applicants and designees at each re-certification and, for wireless carriers, should be limited to holding an FCC license.
- Commitment and ability to provide the supported services – for this guideline as well as what would constitute a “reasonable request,” the Commission should simply adopt the criteria established in *Virginia Cellular* and apply similar commitments for ILECs to meet at regular intervals. Wireless carriers should not be required to use resale to respond to a reasonable request for service. The FCC should not consider the cost of installation and customer premises equipment. Finally, there is no basis whatsoever to require wireless ETCs to provide equal access, a concept which has become an anachronism in the face of today's competitive marketplace.
- Ability to remain functional in emergencies – any guideline adopted should be even-handed and applied with equal force to wireless and wireline ETCs.

- Consumer protection – such requirements would be unnecessary in a competitive marketplace and bias the designation process against wireless carriers. If at all, any guidelines should be limited to adoption of the CTIA Consumer Code.
- Local usage – would be superfluous in the competitive wireless environment and serve to bias the ETC designation against wireless carriers when wireless bundled service plans already have been met with great success; such a requirement, in fact, would restrict consumer choice.

The level of per-line support to be received by ETCs should not be considered as part of the public interest analysis in the designation process. There are better ways to address the size of the fund and consideration of per-line support would not be competitively neutral unless the support already provided to the incumbent over years of receiving support also was examined. Annual certification requirements must be imposed on all ETCs, including the incumbents.

Rural ILEC disaggregation of support is a comprehensive solution to cream skimming issues and thus rural ILECs should be required to disaggregate support in all study areas that are subject to a competitive ETC petition. Where rural ILECs choose not to disaggregate or are not required to do so, a common result is “reverse cream skimming,” whereby a wireless ETC may serve only the high-cost areas yet receive an averaged level of support. The absence of disaggregation, the potential for reverse cream skimming, and the fact that wireless carriers are not responsible for the differences between ILEC study areas and FCC-designated wireless service areas, provide a strong basis for the Commission and the states to depart from any cream skimming analysis altogether.

The Joint Board’s primary connection proposal is contrary to the statute, not competitively neutral and administratively unworkable. It must be rejected. A single, state-subsidized provider can never bring consumers the same benefits or protections as a competitive marketplace. Implementing a single connection restriction also would not be competitively neutral. Moreover, the costs associated with promotional and marketing campaigns forced upon carriers in an attempt to have consumers choose them as “primary” will not promote universal service.

The primary line connection proposal also would send the wrong signals for network investment in rural areas and disserve the purposes of universal service. Funding only a single connection ignores the reality of how both wireline and wireless telephone networks are built – most of the costs of building telephone plant are incurred no matter how many lines are placed or served. Not funding entire networks will neither aid in bringing new carriers to rural areas nor serve to encourage carriers already operating in rural markets to invest, improve or expand. Further, rather than serving as a solution for controlling fund size, since a primary line restriction will not provide sufficient support to any competing carrier, it could actually lead to an increase in the size of the fund.

The growth of the fund must be addressed, but is not as dire as the rural ILEC community makes it seem. In order to control the size of the fund, Dobson would support, as an interim measure, a cap on the total high-cost support upon competitive ETC entry and an allocation of such support based on market share. Dobson would also recommend the following:

(i) examining whether funding is appropriate for rural ILECs with local rates below the average urban rate, (ii) considering whether the USF is duplicative of the Department of Agriculture's RUS loan program, (iii) re-examining rates of return, and (iv) beginning a comprehensive re-examination of the average-schedule formulas.

Finally, Dobson is disappointed that the Joint Board did not address the basis for support in areas with multiple ETCs. Dobson urges the Commission to encourage the Joint Board to accelerate the recently-referred rural/non-rural proceeding and seriously consider basing all support on forward-looking costs.

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**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. ON THE JOINT BOARD'S
RECOMMENDED DECISION**

Dobson Cellular Systems, Inc. ("Dobson") hereby submits its comments in response to the FCC's *Notice of Proposed Rulemaking*¹ seeking comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board").² The *Recommended Decision* addresses the process for designation of eligible telecommunications carriers ("ETCs") and the Commission's rules regarding high-cost universal service support. Dobson urges the Commission to adopt universal service rules and policies that ensure wireless ETC applicants are given a fair opportunity to obtain universal service support. As ETCs, wireless carriers will be able to provide rural consumers with the panoply of wireless services afforded in urban areas that they deserve and demand.

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004) ("*NPRM*").

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd 4257 (2004) ("*Recommended Decision*").

INTRODUCTION

Dobson, through its various subsidiaries and affiliates,³ is licensed to provide wireless telecommunications service in portions of 16 states stretching from Alaska to New York. A significant contributor to the universal service fund (“USF”), Dobson provides service to approximately 1.6 million subscribers throughout its service areas, in predominantly rural areas. Dobson sets itself apart as one of the earliest rural wireless carriers to have rolled out digital service throughout its entire service area, and to offer local, regional, and nationwide rate plans substantially similar to large nationwide wireless service providers. Most recently, Dobson has completed its roll-out of an overlay of both GSM/GPRS and EDGE technology over its existing TDMA networks, which will enable the provision of additional advanced data and information services.

Dobson always has been committed to providing high quality telecommunications services to rural areas of the U.S. because Dobson believes, consistent with Section 254(b)(3) of the Act, that rural consumers should have access to the same services and features enjoyed by urban residents. Facing higher deployment costs resulting from technology developments, Dobson has found an increasing necessity for obtaining USF support to enable further expansion and improvement of service in rural areas.

Dobson and ACC have applied for ETC status in a number of states and directly with the FCC. Dobson thus can speak from experience regarding the ETC designation process from the perspective of a competitive, wireless carrier with a truly rural focus. Dobson believes that the

³ Dobson Cellular Systems, Inc. and American Cellular Corporation (“ACC”) are wholly owned subsidiaries of Dobson Communications Corporation. ACC holds both Cellular Radiotelephone Service and Personal Communications Service licenses.

Commission must address this proceeding with an abiding commitment to follow the statute.

The statute presents three fundamental principles that are crucial for this proceeding:

- **The statute favors competition.** The purpose of the 1996 Act was to introduce competition into local markets. Section 214(e)(2) *requires* the designation of competitive ETCs, except where the incumbent is a rural telephone company, and there it specifically permits it. Congress recognized that a vibrant, competitive market brings consumers more benefit and protection than any regulatory construct. The Commission's universal service rules should maximize consumers' access to competitive markets and the benefits they bring.
- **The statute focuses on rural consumers, not rural carriers.** The stated purpose of the high-cost fund is to ensure that rural *consumers* have access to telecommunications services that are reasonably comparable, in quality and price, to the services available in urban areas. Urban consumers have access to the variety of technologies and service offerings that only a vibrant, competitive market can provide. Rural consumers are entitled to the same. The rural ILECs have come to view the fund as a revenue stream reserved to them alone, but this approach cannot be squared with Congress's purpose.
- **The statute requires a sustainable fund.** The Commission must ensure that the viability of the fund is not threatened by its size. The Commission must take all prudent and lawful steps to minimize the size of the fund and to target support to the statutory goals. But this goal cannot override the other two. Controlling the fund size at the sole expense of competitive carriers would be inconsistent with the statute's commitments to competition and comparable service for rural consumers. To ensure a sustainable fund, the Commission must take a hard look at the enormous amount of support currently flowing to rural ILECs.

These three principles underlie virtually all of Dobson's more specific comments in the remainder of this filing.

DISCUSSION

I. ETC DESIGNATION PROCESS

A. The FCC Should Adopt Only Truly Necessary Guidelines and Apply Such Guidelines in a Competitively Neutral Fashion

The Joint Board has proposed a number of permissive Federal guidelines for states to consider for imposing additional minimum qualifications. The Joint Board's stated purposes in recommending these guidelines are to ensure that the ETC designation process is both "rigorous"

and “predictable.”⁴ Dobson believes that the FCC should only adopt guidelines that are narrowly tailored to identify qualified ETC applicants. Dobson agrees with the Joint Board that the process should be “rigorous,” but “rigor” must not become a subterfuge for bias against wireless applicants. In this regard, the record is virtually devoid of evidence of states designating unqualified ETC applicants, and replete with evidence of the extreme rigor of state ETC designation proceedings.⁵ State ETC proceedings often take years to complete, and involve voluminous testimony, public hearings, and documentation. Dobson’s own experience with state ETC designation proceedings is that states act zealously to ensure that only highly qualified applicants are designated. This is in sharp contrast to the designation process for incumbent

⁴ *Recommended Decision*, 19 FCC Rcd at 4261.

⁵ Comments of Dobson Communications Corporation of Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 14-15 (filed May 5, 2003) (“State proceedings considering competitive ETC applications are typically thorough, rigorous proceedings.”); Comments of Rural Cellular Association and The Alliance of Rural CMRS Carriers, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at i (filed May 5, 2003) (“RCA-ARC Comments”) (“Some commenters criticize states for not conducting rigorous ETC designation proceedings. Yet, most of the roughly 30 ETC petitions that have been granted over the past five years have been granted only after multi-year proceedings which are far more rigorous than an application to become a CLEC.”). Dobson has several examples of the “rigorous” process imposed by the state commissions. In Oklahoma, Dobson submitted an application for full study areas and federal universal service only. A stipulation agreement was entered into with intervenors in the proceeding as of November 2003. The Administrative Law Judge (“ALJ”) did not issue a ruling until July 2004, an unreasonable delay given that a stipulation was signed by all parties, including the staff of the Oklahoma Corporation Commission (“OCC”). The recommended ruling from the OCC contains many provisions that are unnecessary, including a requirement that only plans that have “anytime” minutes of 1000 or more are eligible for USF reimbursement. The ruling also contains provisions for accepting carrier-of-last-resort obligations and filing tariffs of rate plans. The ruling also states that it is not in the public interest to approve a carrier as an ETC unless, at the same time, the OCC believes that it is reasonable to approve another carrier as an ETC in the same area (even if another application is not currently pending). Dobson has filed an appeal with the OCC and has a hearing next week. In Texas, an original application was filed in August of 2003. The Texas PSC forced Dobson to divide its application into three parts (and create separate proceedings for each). Part 1 (non-rural areas) was refiled in December 2003 and given a positive recommendation by the ALJ in April 2004. In May 2004, the Texas PSC remanded the case to the ALJ because the Commission was unclear as to how a consumer would know the wire center boundaries so he or she could determine whether he or she was within a designated area or not. Dobson is now producing very detailed maps to show exactly where it will be designated. The cost of maps alone may approach \$10,000. Dobson’s hearing on this matter is scheduled for September 2004, but it is unclear when a final PSC ruling will be complete. Also, Part 2 (full study areas) was refiled in January of 2004. Dobson completed hearings last month and expects an ALJ recommendation in September. Part 3 (redesignated wire centers) was deemed by the PSC to be an inappropriate request, and Dobson will have to refile this part of the application. Finally, the application for ETC designation in Alaska was filed over a year ago in July 2003. The Alaska commission has not yet even set a procedural schedule for this application.

ETCs, most of whom were designated in a pro-forma fashion with no formal review of their consistency with the statutory requirements.

On an ongoing basis, if necessary, the states and the FCC already have at their disposal a number of methods to ensure that ETCs remain true to their obligations as ETCs. Dobson thus urges the Commission to carefully consider the motivation behind any guideline urged upon it, and opposes the imposition of additional eligibility requirements as an inefficient and needless use of administrative resources.

For the same reasons, the public interest standard of Section 214(e)(2) as applied to rural areas should not be used to raise unnecessary barriers to CETC entry. The public interest standard is best met only by those requirements necessary to ensure designation of qualified ETCs. The Commission should counsel states against attempting to revisit policy decisions made by Congress and the FCC under the guise of this public interest standard. For example, states cannot decide that competition is unnecessary in an area or deny an application based on a preference for the state-regulated incumbent.

States have used the existence of “dead spots” in wireless coverage as a basis for determining that wireless service is inferior to wireline and thus an ETC designation would not be in the public interest. The FCC, however, already has ruled that dead spots are “deemed served” in recognition of the fact that it is entirely unreasonable to expect wireless technology to provide absolutely complete coverage given terrain conditions, etc.⁶ Furthermore, universal

⁶ See 47 C.F.R. Section 22.99 (“service within dead spots is presumed”); *Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, CC Docket No. 90-6, *Notice of Proposed Rule Making*, 5 FCC Rcd 1044, 1048 (1990) (“Generally, a cellular carrier desires that no ‘dead spots’ occur, but, due to technological, topographical and/or economic considerations, has not yet been able to cover the ‘dead spot.’ ... it is likely that either the carrier will cover the ‘dead spot’ when it can or it is not economically or technically feasible for anyone to do so.”).

service support is supposed to be used for the very purpose of improving or expanding service, especially to fill in areas where it would not be reasonably economical to extend service but for universal service support.

The Commission should encourage states to apply additional criteria, such as those included in the proposed federal guidelines, only to requests for designation in rural service areas. The existing minimum eligibility criteria are sufficient for designations in all areas, but most clearly so in non-rural areas where Congress has not imposed any additional public interest requirement.⁷ As there is no need for any further showing in non-rural areas, the Commission should clarify that only the statutory eligibility criteria should apply in non-rural territory.

Dobson supports the Joint Board's goal of "predictability," however, as a rationale for adopting federal guidelines. In the handful of state ETC proceedings in which Dobson has participated, different states have imposed very different requirements. Wide variations in state ETC decisions make both the designation process and future compliance more difficult and costly, ultimately to the detriment of consumers.⁸ Dobson therefore supports a set of narrowly tailored guidelines to the extent they will bring uniformity to the state designation process.

⁷ The Commission in *Virginia Cellular* suggests that there is some additional public interest showing needed for non-rural designations, although the order does not elaborate on what this showing would entail. *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, 1575 (2004) ("*Virginia Cellular*"). To date, in the few designations following *Virginia Cellular*, the FCC has simply concluded that, where the applicant has met the criteria for designation in rural areas, it also has met the requirements of designation in non-rural areas. The FCC otherwise has yet to specify what, if any, additional showing is required for non-rural areas, leading to confusion on the part of ETC applicants.

⁸ States may attempt to argue that the courts have granted them the prerogative to impose additional public interest criteria on wireless ETC applicants. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999). A proper reading of this case, however, is limited only to allowing the states to enforce existing regulations on state regulated carriers that also happen to be Federal ETCs. The states involved in this case "contended that Congress did not mean to prohibit the states from imposing service quality standards" consistent with the state "regulation of intrastate service." *Id.* at 417. Because wireless carriers are not regulated by state commissions and do not provide "intrastate services," the states should not have the authority to impose additional obligations on wireless ETCs.

Further to this end, the FCC should make clear that states who attempt to impose additional public interest requirements during the ETC designation process should do so by adopting regulations in a public proceeding, with opportunity for all interested parties to participate, rather than on an ad-hoc basis.⁹

Finally, the Commission also should make clear that any criteria specified in proposed guidelines should be applied and enforced in a competitively neutral manner against all ETCs, including incumbent rural LECs as appropriate.

B. Specific Guidelines

Dobson would support the proposed guidelines encouraging adequate financial resources, commitment and ability to provide the supported services, and ability to remain functional in emergencies. These guidelines, if followed by the states, are reasonably tied to the statutory criteria and could lead to more consistency and predictability in the ETC designation process.

Dobson opposes the remaining guidelines suggested by the Joint Board as insufficiently narrowly tailored and unrelated to the statutory criteria. The remaining proposed criteria present the danger of “regulatory creep,” whereby the ETC designation process becomes a vehicle to impose monopoly-style regulation on competitive wireless carriers without evidence of consumer benefit that exceeds the benefit of a free market.

1. Adequate Financial Resources

Should the Commission find it necessary to adopt a guideline requiring a showing of adequate financial resources, such showing must be required of all ETC applicants and all designees at each re-certification. The fact that an applicant already has been issued a wireless

⁹ States choosing to impose additional requirements on ETCs also should be encouraged to provide state subsidies that meet the sufficiency requirement of Section 254(b)(5).

license by the FCC should be *prima facie* evidence of adequate financial resources. Any further requirements would be unnecessary and would be a waste of limited administrative resources.

2. Commitment and Ability to Provide the Supported Services

The Joint Board recommends that ETC applicants make a showing of commitment and ability to provide the supported services to all customers who make a reasonable request for service. For this proposed guideline, the Commission simply should adopt the criteria established in *Virginia Cellular*. These criteria already developed by the Commission are sufficiently comprehensive.

Specifically, they require a determination as to whether: (1) the requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service.¹⁰ If, after following these steps, the ETC still cannot provide service, it must notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year, as well as the number of consumer complaints it receives per thousand handsets, with respect to the requested service areas.¹¹ While Dobson is not opposed to

¹⁰ *Virginia Cellular*, 19 FCC Rcd at 1570-71. Some states have objected to the absence of a time requirement to complete the above steps. Dobson would object to a specific timeline for the following reasons: (1) the process is, in part, cooperative with the customers, and thus neither Dobson nor the customer should be held to any deadline while the customer contemplates his/her options, and (2) while landline extension fees are a strong deterrent for many requests for landline service, Dobson would only receive funding if it could satisfy a customer request, and, therefore, it is in its own economic interest to do so.

¹¹ *See id.* at 1571.

providing a “formal” build-out plan, any final rules incorporating such a plan must recognize that some commercially reasonable flexibility is necessary to meet changing customer demands and other relevant factors.

Concurrent with adopting the *Virginia Cellular* criteria, the FCC must adopt similar criteria for the ILECs to meet at regular intervals in the interest of competitive neutrality. Specifically, the ILEC should have to make similar commitments when responding to a reasonable request for service. To the extent that the ILEC is permitted to apply additional construction charges to reach unserved customers, wireless ETCs should be permitted to do so as well.

In adopting this guideline, the FCC also must provide clear guidance regarding what constitutes a “reasonable request.” Only in this way can such requests be addressed in a consistent and equitable manner. Determinations of the reasonableness of requests would be made following the *Virginia Cellular* criteria for wireless carriers, and competitively neutral criteria for the ILECs. If a request is deemed “reasonable,” any service extension requirements that are not covered by line extension surcharges (applicable to both wireline and wireless ETCs) must be supported by “sufficient” funding at either the state or Federal level.

Dobson strongly opposes any guideline that would support requiring a wireless carrier to use resale to respond to a reasonable request for service. There is no similar requirement imposed on ILECs, so a wireless resale requirement would not be competitively neutral.

There also is no need to consider the cost of installation and customer premises equipment.¹² First, the Link-Up program already addresses installation costs. Second, wireless carriers generally heavily subsidize the costs of wireless CPE, and there is no evidence that

¹² See *Recommended Decision*, 19 FCC Rcd at 4267.

wireless ETCs do not also do so. Third, the cost of wireless CPE can vary widely based on the variety of services that a consumer desires from the carrier – ranging from no-frills phones that are offered entirely free of charge (but still offering all of the supported services) to phones with special features, such as digital cameras that may sell for higher (though still subsidized) prices. The prices for all types of wireless CPE are highly controlled by the level of competition, and thus no consumer protection benefit could be obtained by regulating them for ETCs.¹³

Dobson also remains strongly opposed to any equal access requirement, including in response to situations where all other ETCs depart the market.¹⁴ The adoption of an equal access requirement for ETCs would be perhaps the perfect example of the situation described above, where a requirement was imposed in the name of “rigor” but served no other purpose than to bias the ETC designation process against wireless carriers. The competitive environment is rapidly making the concept of equal access an anachronism – for wireline as well as wireless carriers, ETCs or not.¹⁵ The lack of price regulation in the wireless industry (at all levels of government) allowed wireless carriers to innovate and discover that consumers dislike distance-sensitive pricing. Now that the competitive promise of the Act is taking hold, wireline carriers, too, have begun offering bundled packages of “any-distance” minutes.¹⁶ As a result, in the not too distant future, most consumers will no longer distinguish between local and long distance calls.

¹³ In addition, most of the added features in more expensive CPE are not “supported services.”

¹⁴ See *Recommended Decision*, 19 FCC Rcd at 4268-69.

¹⁵ Indeed, a recent article in the Washington Post describes how perceptions over long-distance calls have changed. Christopher Stern, *So Long to the Long-Distance?*, WASH. POST, Aug. 5, 2004, at E1 (“long distance ... appears close to disappearing entirely as its own category, thanks to the popularity of unlimited telephone packages ... People who never expected to change their phone habits have learned to love the new world. Many have switched their long-distance calling to their cell phones.”).

¹⁶ See, e.g., Verizon, *Company Offers Include Unlimited ‘Any-Distance’ ‘Verizon Freedom’ Calling Plan*, at <http://www.verizonld.com/news/index.cfm?Article=126> (last visited Aug. 4, 2004) (“The unlimited calling plan, (continued on next page)

As Dobson and other CMRS carriers have argued, because of the way CMRS service is priced, packaged, and marketed, requiring CMRS carriers to provide equal access would have no public interest benefits.¹⁷ Equal access is not – and should not be – a supported service that ETCs must provide.¹⁸ There is simply no basis to require wireless ETCs to provide equal access in any situation.

3. Ability to Remain Functional in Emergencies

Dobson is keenly aware of the important public safety issues related to ensure continuity of service in emergencies and supports a general guideline encouraging states to require ETC applicants to demonstrate their ability to remain functional in emergencies. Dobson has been an active participant in industry and government efforts in furtherance of homeland security objectives. Dobson deploys battery back-ups and generators to enable continued service in the event of power failures. Any guideline adopted should be even-handed and apply with equal force to wireless and wireline ETCs.

4. Consumer Protection

Like equal access requirements, specific consumer protection requirements are monopoly-era regulations that, if imposed, would serve only to bias the designation process against wireless carriers. Such requirements are unnecessary in the hyper-competitive wireless marketplace, where carriers that displease their customers rapidly lose market share. These

(footnote continued)

Verizon Freedom, includes all direct-dialed domestic calls – local, regional and long-distance – as well as calls to Canada and U.S. territories.”).

¹⁷ Comments of Dobson Communications Corporation on Supported Services Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 15-20 (filed Apr. 14, 2003). Furthermore, an equal access requirement is plainly prohibited under Section 332(c)(8) of the Act, no matter how one attempts to contrive otherwise.

¹⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, 18 FCC Rcd 15090, 15104 (2003).

pressures are more effective than any government regulation – if customers are dissatisfied they can and easily will switch providers.¹⁹

As Dobson has previously explained, because of the commonness of roaming arrangements in the wireless marketplace, rural wireless carriers are subject to competition in rural markets not only from other rural wireless carriers, but also from the large, national carriers with whom they have roaming agreements. The national carriers' advertising reaches rural areas, and their service plans include the areas in rural America where Dobson has constructed and operates network facilities. Dobson must compete with the national carriers' plans or consumers in its markets will obtain wireless service from the national carriers.

If the Commission feels it must establish a consumer protection guideline, it should be limited to showing that the applicant is a signatory to the CTIA Consumer Code, which it found to be sufficient in *Virginia Cellular*.

5. Local Usage

The proposed local usage guideline is yet another example of an idea that would needlessly impose a regulation from the incumbent landline monopoly era that has been rendered superfluous by the competitive wireless environment, serving no purpose other than to bias the ETC designation process against wireless carriers.

This guideline is unnecessary for a number of reasons. First, the concept of "local" usage is rapidly dying. The Commission need only note the popularity and success wireless (and, increasingly, wireline) service plans offering bundled minutes of use at a single monthly rate, irrespective of whether the call is "local" or "long distance." Indeed, even the local telephone

¹⁹ Now that all wireless customers have the ability to port their numbers with the nationwide availability of wireless local number portability, it has become even easier for customers to switch carriers.

companies are adopting service plans that include long distance, ensuring the rapid demise of any distinction from a consumer's point of view of local and long distance as separate concepts.

Second, there is no evidence that wireless ETCs are using universal service to support plans with insufficient amounts of local usage. The number of minutes included at each price point in wireless service plans has increased steadily over the years, and continues to increase.²⁰ Consumer adoption of wireless service is growing, indicating that consumers see value in the plans they are purchasing.

For these reasons, minimum local usage requirements restrict consumer choice. The FCC should not adopt guidelines that would have the effect of restricting consumers from purchasing the kind of service that they want and tailoring the service to their own needs. For example, consumers should be free to select wireless service plans that serve purposes such as wireline replacement, offering free long distance, providing a larger local calling area than the ILEC, or providing mobile service for emergency use only – all of which are legitimate consumer needs that are available in urban areas. The ability of wireless carriers to offer these and other options is maximized only when they can build out networks that are comparable to and competitive with those in urban areas. Imposing a local usage requirement on wireless carriers cuts across the grain of established and popular bundled service plans enjoyed in urban markets. Such requirements would not be competitively neutral and would bias the ETC process against wireless carriers.

²⁰See Description of Transaction, Public Interest Statement and Waiver Request of Cingular Wireless Corporation, FCC Form 603, Ex. 1, ULS File No. 0001656065, WT Docket No. 04-70, at 4 (filed Mar. 18, 2004) (“Rate plans consist of low monthly rates that include hundreds, and often thousands, of minutes that can be used without additional charges. Additional minutes are available for a fraction of the price charged in the 1980s and 1990s.”); *S&P survey finds 10% of wireline customers ready to cut the cord*, RCR WIRELESS NEWS, Dec. 15, 2003, at 3 (stating that over the next year, carriers were expected to offer “aggressive minute packages”).

C. Public Interest Considerations

Dobson acknowledges that the statute requires a public interest finding before an ETC is designated in the service area of a rural LEC. As discussed above, however, Dobson opposes the use of the public interest analysis as a way to introduce hurdles into the ETC designation process, either as an imprecise tool to control growth of the fund or as a vehicle to limit the availability of funding to any class of applicants, such as wireless carriers.

For example, the Joint Board proposes that the level of per-line support to be received by ETCs be considered as part of the public interest analysis.²¹ To the extent the Joint Board views the level of per-line support as pertinent to its concerns over the size of the fund, the FCC more appropriately can address the size of the fund in other ways, as described below in Section II.C. Consideration of the per-line support to be received by competitive ETCs would not be competitively neutral unless the support already being provided to the incumbent also was examined. Implementing a guideline that takes into account the per-line support also would not meet the requirement that support be “sufficient” to allow carriers to provide service throughout a service area.²²

D. Annual Certification Requirement

Dobson believes that any ETC receiving support should be required to annually certify that it is using any universal service funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.²³ Such annual certification requirements

²¹ *Recommended Decision*, 19 FCC Rcd 4274-75.

²² 47 U.S.C. § 254(b)(5). In addition, as the Commission has noted, the amount of support provided to any given ETC is an inconsequential burden on the overall fund. *Virginia Cellular*, 19 FCC Rcd at 1577-78; *Federal-State Joint Board on Universal Service; Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, 6433-34 (2004).

²³ 47 C.F.R. § 54.7.

must be imposed on all ETCs, including the incumbent LECs, and the content of the reporting requirements should be uniform across all states consistent with a Federal USF standard.

Just as the Commission has, pursuant to *Virginia Cellular* and *Highland Cellular*, begun to look more closely at how wireless ETCs are spending ETC funds, designating regulators may be able to reduce burdens on the fund by applying a similar inquiry to incumbent ETCs. Fruitful inquiries may include, for example: (1) whether the LEC is earning more than a reasonable rate of return, in light of overall market conditions where corporate earning rates are typically in the single-digits; (2) whether the LEC's corporate operations expenses are reasonable, or whether the LEC is using support to subsidize a lavish lifestyle for its management; or (3) whether the LEC's staffing levels are reasonable, or whether, for example, a family-owned LEC has superfluous staff members.

E. Service Area Redefinition/Rural Carrier Disaggregation of Support

Dobson concurs with the Joint Board that rural carrier disaggregation and targeting of support “allows them to direct universal service support to those zones within the study area where support is most needed.”²⁴ Dobson believes that disaggregation is a comprehensive solution to cream skimming issues and urges the Commission to require rural LECs to disaggregate support in all study areas that are subject to a competitive ETC petition.

Curiously, the Joint Board “hesitate[s] to say that [disaggregation] necessarily addresses all concerns” related to cream skimming.²⁵ Dobson does not believe any hesitation is necessary. Dobson has never seen an example of a cream skimming issue that could not be resolved by disaggregation, including “where a competitor proposes to serve only the low-cost areas of a

²⁴ *Recommended Decision*, 19 FCC Rcd at 4278.

²⁵ *Id.* at 4279.

rural carrier's study area to the exclusion of high-cost areas.”²⁶ In such a case, the competitor would receive only the small amount of support allocated to the low-cost areas it served, while the higher levels of funding necessary to support service in the high-cost areas would flow only to the carrier that served them. Allowing rural LECs to refrain from disaggregating and targeting support merely provides them with an opportunity to raise cream skimming arguments against competitive ETCs, erecting a needless barrier to competition.²⁷

To the extent that the Commission chooses not to require disaggregation whenever a competitive ETC enters a study area, the cream skimming analysis must also address “reverse cream skimming.” This occurs commonly, but has not yet been given proper consideration by designating regulators.²⁸ Reverse cream skimming occurs when a competitive ETC is able to serve only the *high-cost* portion of a study area where support has not been disaggregated.²⁹ Because support has been averaged across the whole study area, including the low-cost areas the competitor does not serve, the competitor receives a per-line funding amount that is too low to support service in its service area. The potential unfairness of reverse cream skimming is another argument for requiring disaggregation; at minimum, however, a CETC applicants’

²⁶ *Id.*

²⁷ To the extent the ILECs claim that disaggregation is too complicated or costly to implement, they should then direct their existing support to fund such a project as a supported operating expense. Otherwise, the Commission should dismiss any such complaints as an impermissible barrier to entry to the ETC reimbursement system.

²⁸ See, e.g., Petition for Reconsideration of Virginia Cellular, LLC, *Petition for Designation as Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, at 18-19 (filed Feb. 23, 2004) (noting that carriers could be shut out of providing service in low-cost areas because of the holding in *Virginia Cellular*, “while at the same time being asked to serve high-cost areas without sufficient support”).

²⁹ As the Commission is well aware, wireless carriers are frequently limited in the areas they are able to serve by the geographic boundaries of their licensed service areas.

willingness to serve an area despite the lower level of support should weigh strongly in favor of the grant of the application.

In fact, given the failure of the rural ILECs to disaggregate support, the potential for reverse cream skimming, and the fact that wireless carriers are not responsible for the differences between how the FCC defined wireless service areas as compared to study areas, there is a strong basis for the Commission and the states to depart from any cream skimming analysis altogether. While it may be that there could be the “effect” of cream skimming depending on how the disparate wireless and wireline service areas match up, overall these differences are bound to balance out – in any given study area, in some cases a wireless ETC’s service area may cover mostly high-cost areas, and in others, mostly low-cost areas. Further, it is not competitively neutral to require only a subsequently-designated ETC to forgo designation where it may, through no fault of its own, only serve lower-cost areas, as the incumbents have been receiving universal service support far longer than have wireless ETCs.

The Commission’s current rules recognize that there is no reason to question the rigorous analysis states generally apply in granting redefinition requests by allowing petitions for FCC concurrence with state redefinition decisions to be deemed granted 90 days after their public notice date unless the Commission commences a proceeding.³⁰ For some time, however, the Commission has commenced proceedings on all redefinition petitions filed, even in routine cases not requiring further review. The Commission could save considerable resources, both within the Commission and at USAC, by making greater use of the rule provisions that allows routine petitions to be granted without the commencement of a proceeding or further Commission action.

³⁰ 47 C.F.R. § 54.207(c)(3)(ii).

II. SCOPE OF SUPPORT

A. Primary Connection

1. **The primary connection proposal is contrary to the statute, not competitively neutral, and administratively unworkable**

The Joint Board has recommended that the Commission limit the scope of high-cost support to a single or primary connection that provides a customer access to the public telephone network.³¹ Such a proposal is administratively unworkable and unfair to rural customers. Most importantly, however, this policy would contravene the goal set forth by Congress that rural customers have access to services and rates that are “reasonably comparable” to those offered to urban customers.

The Joint Board asserts that “[s]upporting a single connection faithfully accomplishes [the] objective” of assuring reasonably comparable service in rural areas because supporting “a single connection provides access to all of the services included in the definition of universal service” as well as to “all of the additional telecommunications and information services, including advanced services, available to consumers through the public telephone network.”³² Dobson disagrees. As the economies of the Soviet Union and twentieth-century China powerfully demonstrated, a single, state-subsidized provider can never bring consumers the same benefits or protections as a competitive marketplace. The 1996 Act embraced competitive markets, and there is no support in the statute for the proposition that Congress did not intend this to apply as well in rural areas. A monopoly market cannot be “reasonably comparable” to a competitive market.

³¹ *Recommended Decision*, 19 FCC Rcd 4285-86

³² *Id.* at 4282.

The Joint Board is also mistaken that supporting a single connection would be competitively neutral.³³ Not all ETCs operate under the same market conditions. Wireless carriers, for example, operate in a highly competitive market that narrowly constrains their prices. Incumbent LECs, by contrast, operate in a government-regulated monopoly environment where permission to increase prices generally follows from any significant increase in costs. Thus, a consumer decision to select a wireless connection as her primary connection, and thereby eliminate support for the incumbent LEC for her line, is likely to result in an immediate and appreciable increase in the permitted price for the wireline service. In contrast, a consumer's decision to select a wireline carrier as his primary connection, and deny support to his wireless carrier, is not likely to affect the price of wireless service, because the wireless carrier's price is constrained by competition. Instead, the lack of support to the wireless carrier will be manifested in other ways – notably, in decreased ability to deploy and maintain wireless facilities in the most rural areas.

Because the consumers' negative consequences from selecting a wireless primary connection are immediate, while their negative consequences from selecting a wireline primary connection are attenuated, a primary connection approach denies consumers access to critical information to make rational economic decisions, given the differences in the wireless and wireline markets.³⁴ Furthermore, it is unreasonable to expect or to require a consumer to understand the ramifications of and differences between landline and wireless technologies as

³³ *Id.* at 4286.

³⁴ As Smith Bagley has noted in its comments before the Joint Board, “[c]onsumers generally have no knowledge of the nature and purpose of the federal high-cost support mechanism, much less why they should select a ‘primary’ carrier for support they do not receive [themselves].” Comments of Smith Bagley, Inc., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 17 (filed May 5, 2003) (“Smith Bagley Comments”); *see also* RCA-ARC Comments at 27.

part of their thought process to designate which service is their “primary” line. The fact is that in most cases, the customers desire both – they have different uses for each service and at least should have the option of having both.

Efforts to overcome these problems will only increase the burden on the fund. To educate customers about this decision and the consequences of their primary carrier selection, carriers in rural markets will be forced to run promotional and marketing campaigns encouraging the customer to choose their service as primary. The costs associated with such promotional and marketing campaigns will not promote universal service. This marketing activity rather will inflate the cost of providing universal service in rural areas, while doing nothing to contribute to building and maintaining networks in rural areas.³⁵

Not only is the primary connection approach contrary to the statute and universal service principles, it is administratively unworkable. First, the FCC will have to decide what the definition of “household” will be.³⁶ For example, the Commission must decide that if the family chooses a wireless connection as its primary line, whether that means only one wireless connection is funded per family. It will not be a popular decision if the FCC determines that only one family member per household can have access to a supported (and therefore discounted) wireless service. Families in rural areas likely will want their children, at least for safety and security reasons, also to have access to a wireless phone. Clearly, the Joint Board has not thought through the full ramifications of its decision to recommend support for only primary lines.

³⁵ Other administrative costs that will be incurred by carriers include the costs of reporting primary lines to USAC.

³⁶ Communications regulators should not be in the position of making such social policy regulations. *Ex Parte* Presentation of Western Wireless Corp., Primary Line Attachment, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 1-2 (filed Jan. 15, 2004).

Furthermore, the Joint Board has made no suggestions as to the mechanics of enforcing such a policy, assuming the customer actually has been sufficiently educated and been able to make an informed decision. Presumably, customers would have to certify to carriers that they are choosing it as its primary connection and have not chosen any other carriers as primary. Then, to ensure that the customer is providing accurate information, an enormous amount of coordination between carriers will have to take place.³⁷ Such inter-carrier coordination would be quite complicated, expensive and difficult to implement.

2. The primary line connection proposal would send the wrong signals for network investment in rural areas and disserve the purposes of universal service

Universal service funds have been and should be used to provide appropriate incentives for companies actually to incur the substantial expenses associated with constructing or extending their networks into high-cost areas.³⁸ A primary connection policy (particularly as envisioned by the Joint Board) would not provide such incentives for any carriers other than the incumbent. In fact, such a policy may serve only to discourage investment in rural areas by all carriers.

³⁷ Smith Bagley Comments at 17 (“[A]ny rule requiring customers to select their ‘primary’ line would be administratively unworkable on the reservation lands [Smith Bagley] serves, because there is no way to send notices to many consumers, no way to get existing customers to come to any office to sign a form, and no way to double check on the certifications, as most they (sic) live many miles (sometimes hundreds of miles) from the nearest store.”).

³⁸ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 32 (filed May 5, 2003) (“OPASTCO Comments”) (“High-cost should never be confused with a program to simply reduce the rates for telecommunications service charged to an individual end-user.”). Also, OPASTCO stated that Sections 254(b)(3) and Section 254(e) require that high-cost support be “utilized for *infrastructure investment* in areas where it would not otherwise be economically feasible to provide services at rates that are affordable and reasonably comparable to urban areas of the country.” *Id.* at 31-33 (emphasis added) (finding support from Section 254(b)(3)’s requirement that rural customers have access to the same services available to urban customers and Section 254(e)’s requirement that universal service support be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended”).

Funding only a single connection per household ignores the reality of how telephone networks are built, both wireless and wireline.³⁹ Building a network is not accomplished by bringing service to individual customers, but instead by bringing service to entire areas.⁴⁰ “The switches, trunks, and infrastructure necessary to complete the network must be constructed whether a single customer is served, multiple customers are served, or customers receive multiple lines. The cost of each additional line is nominal compared with primary network investment. In short, most of the costs of placing telephone plant are incurred no matter how many lines are placed.”⁴¹ As such, building a network is a “sunk cost” in that the cost has already occurred, regardless of whether it is being utilized at any particular time.⁴²

Specifically, for wireless service, a CMRS tower must be positioned to serve all potential customers in a cell area with radio capacity.⁴³ There also are individual and unique costs associated with serving each connection. Within a single network, if five separate consumers at a given residence have a wireless phone, each consumer may use the network simultaneously and thus require sufficient spectrum and radio transmitter/receiver capacity at the cell site to provide appropriate call completion levels and quality service. As such, the costs generated by each connection are appropriately supported.⁴⁴ Even if one consumer discontinues its use of the

³⁹ Comments of The Alaska Telephone Association, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 17 (filed May 5, 2003) (“Alaska Telephone Association Comments”).

⁴⁰ See, e.g., Comments of The Nebraska Rural Independent Companies, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 22 (filed May 5, 2003) (“Nebraska Rural Companies Comments”).

⁴¹ Alaska Telephone Association Comments at 17.

⁴² OPASTCO Comments at 32.

⁴³ Nebraska Rural Companies Comments at 23.

⁴⁴ RCA-ARC Comments at 28; Smith Bagley Comments at 16-17.

service, the wireless carrier still has incurred the cost of building the network and providing the capacity in that area.

Funding only individual lines and not networks will neither aid in bringing new carriers to rural areas nor serve to encourage carriers already operating in rural markets to invest, improve or expand.⁴⁵ First, not funding entire networks does not send the “appropriate entry signals” to carriers thinking of investing in rural areas because they will face complete uncertainty on whether they will be able to capture enough customers – and therefore enough universal service funding – to adequately cover the enormous costs incurred building a network in the rural area.⁴⁶

Secondly, carriers already operating in rural markets are unlikely to invest further in their networks or expand the network, having no reasonable or acceptable expectation for a return on the investment made. Regardless of whether carriers actually capture customers and receive universal service, they will not be able to efficiently allocate the use of their funds because the actual lines supported would be random and unpredictable.⁴⁷ This could prove to be specifically

⁴⁵ Nebraska Rural Companies Comments at 23 (“If a larger number of those communications paths would not be eligible for support, then a carrier serving a rural market will be unlikely to build the network capacity required to meet the total demand, because that carrier must price non-primary line service in a manner that is not affordable.”).

⁴⁶ See Alaska Telephone Association Comments at 17-18 (“A primary line policy also discourages network development. If there is no guarantee that a carrier will actually capture or maintain a remotely located customer, or that its facilities will be considered the ‘primary’ line, the incentive to undertake the investment is decreased. Such a disincentive is of particular concern in Alaska, where the scarceness of community and information resources places a premium on the need to have access to advanced services through a telecommunications carrier. In these areas, infrastructure build-out should be promoted, not discouraged, if universal service is to be preserved.”). The Joint Board argued that the primary line proposal sends the “appropriate entry signals.” *Recommended Decision*, 19 FCC Rcd at 4258, 4279 and 4286.

⁴⁷ Western Wireless states that a primary line restriction also is economically inefficient and harms consumers because it “inhibit[s] the provision of ‘second lines’ and impede[s] competition in the ‘second line’ marketplace.” Comments of Western Wireless Corporation, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Attachment J at 6 (filed May 5, 2003) (“Western Wireless Comments”); see also Nebraska Rural Companies Comments at 23 (“[I]f a carrier has already built a network based upon the past assurance that universal service would provide sufficient support, reducing support to only lines that have been deemed ‘primary’ through some yet unknown process could jeopardize that carrier’s ability to continue serving customers.”).

detrimental for the deployment of wireless broadband services in rural areas. Rural wireless carriers considering deployment of such broadband services will be unlikely to make the large investments necessary in their network (which may include acquiring additional spectrum) to deploy such services in rural markets if the FCC adopts the primary line proposal.

In sum, adoption of a primary line restriction will “stifle investment, since there would be no certainty as to how much support a carrier would receive and whether that support would be sufficient to recover its costs. Without investment in the network, rural consumers would no longer have access to services that are reasonably comparable to those available in urban areas.”⁴⁸

3. A primary line restriction is not necessary to control the size of the universal service fund

As stated above, the Commission should reject the primary line restriction because it would unnecessarily restrict consumer choice and investment by competitive rural carriers. The primary line proposal also should not be implemented in order to limit the size of the fund, as there are more appropriate ways to address this concern.

In fact, because a primary line restriction will not provide sufficient support to any competing carrier, it could actually lead to an increase in the size of the fund.⁴⁹ Regardless of whether or not rural ILECs keep customers, they continue to receive the same net amount of universal service funding. As such, as an ILEC customer count goes down, its per-line funding increases. In the meantime, under the current rules, competitive ETCs will receive the same per-

⁴⁸ OPASTCO Comments at 33.

⁴⁹ Nebraska Rural Companies Comments at 25.

line support that the ILEC receives for customers who select their service as a “primary” line, resulting in a continually growing fund.⁵⁰

The better policy for the Commission to undertake would be to support multiple lines – wireless and wireline plus secondary lines of both – and adopt a more rational method for containing the growth of the fund. Suggestions for controlling the size of the fund are discussed in section II.C, below.

B. The Availability of USF Does Not “Artificially Encourage Competitive Entry”

The Joint Board is plainly wrong when it asserts that USF availability “artificially encourage[s] [competitive] entry ... where a rational business case cannot be made absent assumptions of support for *all* connections.”⁵¹ The reality is that the availability of such funds alone does not make or break the business case to seek ETC designation. ETC designation comes with costs to the operator and a host of responsibilities that it does not incur unless it chooses to seek designation. ETC designation is not a “free lunch.” Operators must carefully consider whether or not they agree to operate under the conditions that exist as an ETC.

Furthermore, rural customers demand access to wireless services⁵² and the availability of support goes a long way to enable wireless carriers to make the investments necessary to provide such services. In fact, it is for the very reason that it may not in some cases make a rational

⁵⁰ Western Wireless Comments, Attachment J at 6; Alaska Telephone Association Comments at 17; RCA-ARC Comments at 28 (“A new requirement to only support one primary line would have to take into account all network costs incurred by a carrier which presumably would increase the per-line support amounts and not have the intended effect of lowering overall support levels.”); Nebraska Rural Companies Comments at 25 (“[A]n approach that is perceived to limit the size of the fund by basing the support on primary lines and captured customers actually will have the reverse effect.”).

⁵¹ *Recommended Decision*, 19 FCC Rcd at 4286 (emphasis in original).

⁵² *North Dakota PSC Launches Initiative to Expand Wireless Service in Rural Areas*, TR DAILY, July 2004 (noting the increasing importance of wireless service in North Dakota, the North Dakota Public Service Commission launched an initiative “designed to encourage wireless investment in the state, especially in underserved areas.”).

business case to extend service to rural areas that universal service support needs to be made available.

Any theory that the FCC should not designate multiple ETCs where the market will not support even one is also contrary to the Act. Section 214(e) clearly contemplates the existence of support to multiple ETCs except under limited circumstances – that is, it is the exception, not the rule, that the FCC is not to designate multiple ETCs. If it were true that the fact that an area receives support means that the market will not support a single additional ETC (assuming that such a determination could be made), then the FCC would never designate a second ETC in clear violation of Section 214(e). Furthermore, under Section 254(b)(3), support should be available to ensure reasonably comparable services in rural areas – which necessarily must include wireless.

C. There Are Better Ways to Address the Size of the Fund

As an initial matter, the growth of the fund is not as dire as the rural LEC community makes it seem. For example, Verizon has estimated that, if all of the currently pending ETC petitions were granted, the size of the rural high-cost fund would increase by approximately \$430 million per year.⁵³ The high-cost fund, however, currently amounts to nearly \$4 billion per year.⁵⁴ Thus, even if Verizon's inflated estimate is correct (which Dobson does not believe⁵⁵), granting *all* of the pending ETC petitions would increase the size of the fund by scarcely more than 10 percent.

⁵³ Comments of Verizon, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 3 (filed June 21, 2004).

⁵⁴ See, e.g., USAC, *Federal Universal Service Support Mechanism Fund Size Projections for the Third Quarter 2004*, CC Docket No. 96-45 (filed Apr. 30, 2004).

⁵⁵ Written *Ex Parte* Comments of Dobson Cellular Systems, Inc., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 4 (filed June 24, 2004) (“Dobson *Ex Parte*”).

Even more wildly speculative is the assertion of the New York State Telephone Association that, if *all* CMRS providers nationwide were to apply for and receive ETC status, the annual cost of the high-cost fund would increase by \$2 billion.⁵⁶ Even assuming *arguendo* the accuracy of this dubious estimate, however, this would mean that, even if *every* CMRS carrier in the country received ETC designation, competitive ETCs still would receive *only about one-third* of all high-cost funding, with the remaining two-thirds of the fund going to rural ILECs.⁵⁷ This apparently would be true even though there are up to six CMRS carriers serving most areas, but only one ILEC. Even if accurate, then, these types of doomsday estimates are perhaps the best possible demonstration that funding competitive ETCs is no real threat to the sustainability of the fund. As can be seen, even under the worst-case scenarios suggested, the increase in support levels from ETC designation will be relatively modest. If anything, the fund is threatened by bloated payments to rural ILECs, which have increased by over \$1 billion in the last three years.⁵⁸

Dobson agrees that a bloated USF would threaten the health of the telecommunications sector, and supports efforts to keep the fund size reasonable. But the USF should not be balanced on the backs of competitive ETCs. The bulk of the recent growth in the fund has gone to rural ILECs, not competitive ETCs. Contributing to its growth is the fact that rural ILECs are entitled to a guaranteed revenue stream, while all other ETCs (and, indeed, all other carriers) face the risks inherent in a competitive marketplace. The Act does not intend the USF to be a welfare

⁵⁶ Comments of the New York State Telecommunications Association, Inc., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 11 (filed June 21, 2004).

⁵⁷ If the high-cost fund grew by \$2 billion from its current \$4 billion level, the fund would total \$6 billion, of which CETCs would collect \$2 billion, or one-third.

⁵⁸ See Dobson *Ex Parte* at 3-4.

system for the rural ILECs; rather, it intends to ensure that consumers in rural areas are not disadvantaged relative to those in urban areas. By making support available to all competitors, the USF can benefit from the efficiencies that competitive markets bring. In contrast, using the USF to insulate ILECs will only lead to a bloated, unsustainable fund and the continuation of monopoly-style ILEC services that are not subject to competitive pressures ultimately beneficial to consumers.

Dobson recognizes that the FCC should implement steps to control the size of the fund, and offers the following suggestions. First, only as an interim solution, Dobson supports Western Wireless' recommendation, which was rejected by the Joint Board, that would "cap total high-cost support in an area upon competitive ETC entry and allocate the support among ETCs based on market share."⁵⁹ This proposal would permit funding to grow by no more than the rate of inflation plus the rate of growth in the number of households (or population) in a certain area.⁶⁰ This proposal also was proffered by the Rural Task Force as a way to control the problem that arises when an ILEC loses market share but continues to receive a fixed dollar amount of support, thereby increasing the per-line funding.

The cap proposed by Western Wireless, however, cannot be a long-term solution to control the fund size as it does not support the building, maintenance and upgrades to entire networks in rural markets. As such, Dobson supports this proposal as an interim solution only. To the extent that the FCC determines that a near-term solution is needed to control the growth in the universal service fund, Dobson supports the study area cap proposal as an interim solution because it is more competitively neutral and administratively workable than the primary line

⁵⁹ *Recommended Decision*, 19 FCC Rcd at 4287.

⁶⁰ Western Wireless Comments, Attachment J at 8.

approach. If the Commission implements this proposal, it will have to revisit the issue of funding entire networks in rural markets in order to foster further investment in the rural markets.

Other creative ideas for controlling the fund size should be considered as well. These include:

- Examining whether funding is appropriate for rural ILECs with local rates below the average urban local rate. Although section 2(b) of the Act places authority over local rates with the states, the Commission may decide (particularly in consultation with the Joint Board) whether federal support is excessive if it permits rural rates that are substantially below urban rates. Many rural LEC ETCs have local rates that are 50% to 75% below urban LECs' local rates, even though the cost of service in urban areas is substantially below the cost of service in rural areas. The average urban local rate would be an appropriate benchmark for determining the appropriate level of support for rural wireline ETCs.
- Considering whether USF is duplicative of the Department of Agriculture's RUS loan program. Although the Commission has, on occasion, acknowledged the benefits of the RUS loan program to rural carriers, the Commission has never undertaken an examination of whether it is necessary to provide explicit support when loans also are available. The size of the fund could be reduced by deducting RUS loan disbursements (amortized over the term of the loan) from an ETC's universal service support. Interest on RUS loans is subsidized by general revenues, placing less of a burden on the telecommunications sector, so shifting support to the loan program increases economic efficiency. Because the RUS loan program is available to both wireline and wireless carriers, taking account of it for universal service purposes would be competitively neutral.
- Re-examining rates of return. Many rural LEC ETCs are rate-of-return carriers and, under current Commission rules, are guaranteed a rate of return of at least 11.25%. This rate was set in the 1980s, when interest rates were substantially higher than today. Universal service funding is one component of the revenue that rural LECs use to reach their permitted rate of return. The Commission should examine whether it is consistent with sound policy to use the federal USF to support carriers' rates of return that are substantially above market rates.
- Beginning a comprehensive re-examination of the average-schedule formulas. Many rural LEC ETCs receive support based not on their own book costs but on the average schedules developed by NECA. Dobson is not aware that these schedules have been subject to regulatory oversight to account for technological advances or other increases in productivity that affect costs. The introduction of efficiencies into the average schedules could lead to reductions in the overall size of the fund.

The growth of the fund must be controlled, but there is no immediate need to do so – and certainly not as a result of wireless ETC designations. The centerpiece of the Joint Board's

proposals for controlling the fund size – the primary line restriction – is illegal and unworkable, as demonstrated above. Other proposals in the *Recommended Decision* would control the fund size by raising barriers to competitive ETCs’ entry, in conflict with the statutory goals of competition and reasonable comparability. Yet other alternatives exist, which the Commission must consider to ensure a sustainable fund. The Commission should seek a further recommendation from the Joint Board that analyzes the alternatives discussed herein, as well as other alternatives that may be feasible and consistent with universal service principles.

III. BASIS FOR SUPPORT

Dobson is disappointed that the Joint Board declined to address the issue of the basis for support in areas with multiple ETCs as this would have provided the best opportunity for addressing its concerns over universal service costs. In any event, Dobson urges the Commission to encourage the Joint Board to accelerate the rural/non-rural proceeding, which was referred to the Joint Board on June 28, 2004. Dobson believes that the Commission should give serious consideration to basing support for all carriers on forward-looking costs, because they may remove incentives for gold-plating and other types of fraud and abuse.

IV. ACCURATE, LEGIBLE AND CONSISTENT MAPS

The FCC’s rules require carriers who have elected to disaggregate and target high-cost support to submit maps “which precisely identify the boundaries of the designated disaggregation zones of support within the carrier’s study area.”⁶¹ In the *Recommended Decision*, the Joint Board addresses concerns that such maps are of “varying quality and utility.”⁶²

⁶¹ 47 C.F.R. § 54.315(f)(4).

⁶² *Recommended Decision*, 19 FCC Rcd at 4300.

Dobson agrees that for those few rural ILECs who actually took advantage of the opportunity to disaggregate support, the maps are often difficult to discern. Dobson thus agrees with the Joint Board that the FCC should delegate authority to USAC to develop standards to ensure that these maps are accurate, legible and consistent. Most importantly, such maps must be provided in a uniform, electronic format. Furthermore, Dobson urges the Commission to ensure that all study area maps needed by ETC applicants meet the same standard.

V. ANNUAL CERTIFICATIONS

In the *NPRM*, the Commission proposes to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days.⁶³ Currently, newly-designated ETCs must file waiver petitions in order to receive universal service funding from the date of ETC designation in instances where the date of designation falls after a state certification filing deadline. Dobson fully supports this proposal, as it will eliminate the administrative burden on both the FCC and on ETCs associated with the present need for filing such waiver petitions.

⁶³ *NPRM* at ¶ 5.

VI. CONCLUSION

For the foregoing reasons, the Commission should adopt changes to its universal service rules consistent with the recommendations set forth herein.

Respectfully submitted,

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